

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**JOSEPH JEWELL,**

**Defendant.**

**CASE NO. 8:05CR101**

# MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation (Filing No. 20) issued by Magistrate Judge Thomas D. Thalken recommending denial of the Defendant's motion to dismiss (Filing No. 14). No objections have been filed to the Report and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).

The Defendant seeks an order dismissing the Indictment, arguing that the Defendant's rights under the Speedy Trial Act, 18 U.S.C. § 3161, were violated.<sup>1</sup> This case presents a situation in which the Defendant appeared for initial appearance and arraignment pursuant to a Writ of Habeas Corpus Ad Prosequendum, as he was serving a state sentence. At arraignment, the government orally moved for detention. Judge Thalken held the motion for detention in abeyance until the Defendant would come into federal custody. Also at arraignment, Jewell waived his rights, through counsel, under the IAD and agreed to return to state custody. (Filing Nos. 6, 7.)

In his Report and Recommendation, Judge Thalken determined: the government's oral motion for detention was a pretrial motion for the purposes of 18 U.S.C. §

<sup>1</sup>As Judge Thalken noted, the Defendant makes no claim under the Sixth Amendment or the Interstate Agreement on Detainers (“IAD”).

3161(h)(1)(F); a hearing is required on the motion for detention; the delay pending the hearing on the motion for detention is excludable under the Speedy Trial Act;<sup>2</sup> and, at the time of the filing of the Report and Recommendation, no days had elapsed under the Speedy Trial Act. For these reasons, Judge Thalken concluded that the Defendant's motion to dismiss should be denied.

Notwithstanding the absence of objections, pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3, the Court has conducted a de novo review of the record. The Court has read the Defendant's brief (Filing No. 15) and the relevant transcripts (Filing No. 18, 19). The Court has also viewed the file. Because Judge Thalken fully, carefully, and correctly applied the law to the facts, the Court adopts the Report and Recommendation in its entirety.

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation (Filing No. 20) is adopted in its entirety; and
2. The Defendant's motion to dismiss (Filing No. 14) is denied.

DATED this 15<sup>th</sup> day of September, 2005.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge

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<sup>2</sup>Judge Thalken noted that Jewell did not object to the Court's holding the motion in abeyance and, even if he had not consented, good cause existed for holding the motion in abeyance for an extended period until Jewell would come into federal custody.